IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 163 of 1992

For Approval and Signature:

HON'BLE MR.JUSTICE M.S.SHAH
and
HON'BLE MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

COMMISSIONER OF INCOME-TAX

Versus

GULATI FAMILY TRUST

Appearance:

1. INCOME TAX REFERENCE No. 163 of 1992
MRS MAUNA BHATT FOR MR MANISH R BHATT for Petitioner
SERVED BY RPAD - (N) for Respondent

CORAM : HON'BLE MR.JUSTICE M.S.SHAH
and
HON'BLE MR.JUSTICE A.M.KAPADIA

Date of decision: 28/01/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE M.S.SHAH)

In this reference at the instance of the revenue, following question has been referred for our opinion in respect of the assessment year 1983-84:-

"Whether, the Appellate Tribunal is right in law and on facts in cancelling the interest under section 201 (1A) of the Income-tax Act?"

2. The respondent assessee is a Private Specific Trust assessed in the status of an A.O.P. The beneficiaries are known and their shares are determinate. During the assessment year under consideration, the assessee paid interest to the tune of Rs.4,14,934/- to its creditors. Out of the aforesaid payment, the respondent deducted tax at source to the tune of Rs.32,361/- and paid the same to the Government Account on 17.7.1983. According to the ITO, the payment was late by 11 months and hence the assessee was liable to payment of interest u/s. 201 (1A) of the Income-tax Act. By means of an order dated 24.12.1985 the ITO levied interest to the tune of Rs.3,553/-

Before the CIT (Appeals), the assessee contended that it was not liable to deduct tax at source within the meaning of section 194-A of the Income-tax Act and, therefore, there was no liability to pay interest under section 201 (1A) of the Income-tax Act. The CIT (Appeals) held in favour of the assessee and the Tribunal confirmed the said decision. Therefore this reference is filed at the instance of the revenue.

3. We have heard Mrs. Mauna Bhatt, learned Standing Counsel for the revenue. Though served, none appears on behalf of the respondent assessee.

4. At the hearing of the reference today, our attention is drawn to the decision dated 6.11.2001 of this Court in ITR No.152 of 1993 and connected matters wherein this Court has followed the decision of this Court in M.L. Family Trust v. State of Gujarat, (1995) 213 ITR 152. In the said case the assessee filed an application for quashing the complaint against the Trust being prosecuted for offences relating to non-deduction of tax under Section 194A of the Income-tax Act. In that case it has been specifically held that the status of the trustees would be that of individual and section 194A of the Income-tax Act would not apply and therefore there was no question of deduction of tax and hence the complaint was liable to be quashed.

Since this Court has consistently held that trustees are to be treated as individual, Section 194A of the Income-tax Act would not apply and hence there is no liability to pay interest under Section 201 (1A) of the Income-tax.

In view of the above discussion, we answer the question in the affirmative i.e., in favour of the assessee and against ther revenue.

The reference stands disposed of accordingly.

(M.S. Shah, J.)

(A.M. Kapadia, J.)

(karan)